IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3581 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NASEEMBANU GULSHAN MOHAMMED KURESHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3581 of 2001

MR ANIL VARMA FOR MR MM TIRMIZI for Petitioner No. 1

S.S.PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/09/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), District Magistrate, Gandhinagar, vide order dated February 19, 2001 (Annexure-A to the

petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated February 19, 2001 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act and as 26 cases under the prohibition Act are registered against the petitioner which are still pending for trial, and the statements of five witnesses are recorded, according to the detaining authority activities of the petitioner are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act were exercised by the detaining authority by not disclosing the names of the witnesses and accordingly detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Mr Anil Varma, learned advocate for the petitioner has restricted his arguments to the fact that detaining authority has considered all the old cases while passing the order of detention which were of years 1998, 1999, 2000 and the last is of August 24, 2000 and the order of detention came to be passed on February 19, 2001 i.e. five months after registering the last case. Therefore, on the basis of stale material order of detention passed by the detaining authority cannot be sustained in the eyes of law. Besides this, statements of five witnesses recorded on September 9, 2000 were never verified by the detaining authority, therefore also, subjective satisfaction recorded by the detaining authority under Section 9(2) of the Act cannot be considered as genuine. No plausible explanation is coming forth as to why order of detention is passed after abnormal delay. Learned advocate for the petitioner has therefore prayed to pass appropriate order by setting the petitioner at liberty forthwith.

5. Mr. S.S.Patel, learned AGP appearing on behalf of the respondent State has opposed the petition. He, however, does not dispute the factual aspect about the fact that the order of detention is passed after abnormal delay from the date of registration of the last offence as well as from the date of recording of the statements. He, therefore, requested to pass appropriate

orders in the light of the settled principles enunciated by the Supreme Court as well as this Court.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the petition and the documents annexed therewith. I have also considered the impugned order of detention passed by the detaining authority.

7. There is no manner of doubt that the last offence against the petitioner came to be registered on August 24, 2000 whereas the impugned order of detention came to be passed on February 19, 2001. But prior to that, the detaining authority had recorded statements of five witnesses on September 9, 2000. However, those statements were never verified by the detaining authority.

8. In the case of ANAND PRAKASH V. STATE OF UP-AIR 1990 SC 516, it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

9. A similar view is also expressed by this Court in ELESH NANDUBHAI PATEL V. COMMISSIONER OF POLICE, AHMEDABAD CITY -1997(1) GLH 381.

10. Applying the principles enunciated by the Supreme Court and this Court in the aforesaid two judgements, to the facts of the present case, at the cost of repetition be it stated that the last offence registered against the petitioner on August 24, 2000 could not be a proximate cause and, therefore unexplained
delay makes the ground of detention not proximate and vitiates the order of detention itself. Therefore, on the ground of delay alone, order of detention deserves to be quashed and set aside and the petition deserves to be allowed.

11. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated February 19, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. Direct service is permitted. No ordr as to costs.

Mr. Anil Varma, learned advocate for the petitioner states that when the detention order was

passed against the petitioner, she was sent to Nadiad Sub-Jail but at present she is transferred to Central Jail, Vadodara. Therefore, writ of this judgement/order may be sent to Central Jail, Vadodara.

In view of this registry is directed to send the writ of this judgement/order to Central Jail, Vadodara.

(A.M.Kapadia, J)
Jayanti*